one. The President made the rules, and he may at his pleasure rescind them. He may draw up such rules for the regulation and discipline of his public officers, but to call the rules, though authorized by Congress, a part of the law of our land, would appear to be giving the executive more than his constitutional powers and infringing on the rights of the legislature. If it be said that the act would then be stripped of its purpose, it may be answered that the purpose of the act is found in its express provisions, namely, the establishment of competitive examinations and the forbidding of removals for refusal to contribute for partisan objects. The fact that only removal for such cause was prohibited would seem to show that Congress, wisely or not, intended to leave removals for other causes to the regulation and discretion of the executive, the principle of *expressio unius est exclusio alterius* applying.

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CRITICISM OF JUDGE NO CONTEMPT OF COURT. — An instructive instance of the way in which the courts of this country have sometimes been obliged to depart from the common law of England, simply on the ground that it is inconsistent with the spirit of our institutions, is found in the case of *State* v. *Circuit Court of Eau Claire County et al.*, 72 N. W. Rep. 173 (Wis.). The facts of this case, which was an application for a writ of prohibition to restrain a lower court from punishing an alleged contempt, were of a very unusual character. Articles were published in a newspaper criticising the conduct of a judge who was then a candidate for re-election to his office, and accusing him of partiality and corruption, though not with regard to any particular case then pending. This judge thereupon had the author of the article and the publisher of the newspaper brought before him on a charge of contempt of court. On the application for the prohibition the question to be decided was whether the judge had power to punish as a contempt the publication of such articles, supposing them to be proved libelous. The Supreme Court of Wisconsin held that he had no such power; and in so doing followed the current of authority in this country. In England it has always been said that the publication of any libel upon a judge of the superior courts in the conduct of his office was a contempt of court, as tending to bring the administration of justice into disrepute, and might be summarily punished as such. The power thus lodged in the English courts, however, has very seldom been used, except in instances where the attack has been upon the conduct of the court in some case then before it, in which instance there is an evident attempt to improperly influence judicial action. It has been held, moreover, that this power to punish for any disrespectful comment belongs only to the superior courts, which are invested with a peculiar and time-honored sanctity, as direct representatives of the Sovereign's Majesty, and not to inferior courts of record, although the latter do possess the ordinary powers of punishing for contempt which are necessary for their protection in the discharge of their functions.

In this country, the courts have not been backward in asserting their inherent and necessary power, without the aid of legislatures, or even in spite of attempted interference on their part, to punish summarily for contempt; and the publication of articles reflecting on the conduct of judges or officers of the court in a pending suit has generally been held to amount to contempt. In a few cases the power has been asserted as broadly as in England, but for the most part, when the point has arisen, it has been held that the courts have no power to punish as con-

tempts the publication of criticisms of the conduct of a judge, such as were those in the Wisconsin case. The protection expressly extended to freedom of speech and of the press in the constitutions of all our States, as well as in that of the United States, though it could not operate to cut down the power to punish for contempt so far as that is necessary to the courts for their self-defence, yet seems to render it improper for them to proceed summarily to silence criticism of their conduct, except where such action is thus necessary. Where the criticisms are with regard to past transactions, it would seem that there is no interference with the present administration of justice, and that the persons attacked ought to be left to their action of libel. The very fact that such a case as that of the Wisconsin judge could arise shows the danger of any other rule.

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ATTACHMENT OF A SCHOLARSHIP. — The question of what forms of property may be taken in execution of a judgment has been presented in a new form in the recent case of *Cleveland National Bank* v. *Morrow*, 42 S. W. Rep. 200 (Tenn.). A perpetual scholarship had been conferred upon the defendant by vote of the corporation of a college. The defendant had been a benefactor of the college; and in acknowledgment of his favors the college gave him the right to keep one scholar appointed by him at the institution to enjoy gratuitously all its advantages. This scholarship was attached under a decree in equity, and sold by a master in chancery for the benefit of the creditors of the defendant; and the question arises whether this attachment should have been permitted. No direct authority, strangely enough, is to be found upon the point. The question, however, is important, and may have a wide application; for if the attachment is to be allowed in this case, similar rights, as for instance the right to appoint a patient to a free bed in a hospital, would also become subject to transfer in this summary manner.

The Supreme Court of Tennessee decided that the attachment in question was improper; and principle and policy support this view. What cannot be assigned, obviously cannot be taken in execution; and no right dependent upon the personal character of the holder can be assigned. For this reason a power of appointment to charitable uses under a will cannot be assigned; for its exercise demands an effort of judgment on the part of one particular person. *Doyley* v. *Attorney-General*, 4 Vin. Abr. 485. In applying the principle to the present case it is unnecessary to decide the exact nature of the college's liability. Whether the obligation be looked upon as a binding agreement on the part of the college, a revocable offer, or a gratuitous promise, the right or privilege conferred is in any case inseparably joined with the personal characteristics of the person intended to make use of it. So long as it lives in him he can no more transfer it to another than he can transfer his own mind. The college conferred the power upon him in reliance upon his personal judgment in making the appointment. No proposal was made for taking a scholar not designated by this one particular person; and gross injustice might be done if the college were forced to accept the choice of another person who may have nothing to recommend his judgment apart from the fact that he is a creditor of him who was first intended to exercise the power. The conclusion is inevitable, that the privilege of appointment under this scholarship is a personal matter, not assignable, and hence not properly subject to attachment.